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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1932.

No. [redacted]44

L. M. DAKIN (SUCCESSOR TO A. M. ANDERSON), AS RECEIVER OF THE FIRST NATIONAL BANK OF ST. PETERSBURG, FLORIDA, PETITIONER,

vs.

TAVER BAYLY, AS LIQUIDATOR OF THE PEOPLES BANK OF CLEARWATER, FLORIDA, RESPONDENT.

BRIEF OF THE COMPTROLLER OF THE CURRENCY AS AMICUS CURIÆ.

GEORGE P. BARSE,
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Attorneys for F. G. Awalt, Acting Comptroller of the Currency.

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vs.

TAVER BAYLY, AS LIQUIDATOR OF THE PEOPLES BANK OF CLEARWATER, FLORIDA, RESPONDENT.

BRIEF OF THE COMPTROLLER OF THE CURRENCY AS AMICUS CURIÆ.

Comes now F. G. Awalt, Acting Comptroller of the Currency of the United States, and respectfully submits his brief, as *amicus curiæ*, in support of the petition for writ of certiorari filed by L. M. Dakin (Successor to A. M. Anderson), Receiver of the First National Bank of St. Petersburg, Florida, in the above entitled cause.

I.

Foreword.

Citation of the opinions below, statement concerning the jurisdiction of the court to issue writ of certiorari, summary of the facts, specification of errors, and argument of the issues involved, have been fully covered in the record, petition and supporting brief filed by the Receiver of the First National Bank of St. Petersburg, Florida, and therefore reference is here made to the same in the interest of avoiding repetition.

II.

Interest of the Comptroller of the Currency in the Case from an Administrative Standpoint.

The Comptroller of the Currency is charged by law with the liquidation of insolvent national banks (through receivers appointed by him), and with the disbursement of the net proceeds of such liquidation to the creditors of such banks. More than one thousand national banks are now in the hands of receivers appointed by the Comptroller of the Currency. An additional thousand national banks are in the hands of conservators appointed by the Comptroller of the Currency, pursuant to the provisions of the Bank Conservation Act, passed at the present session of Congress, to be reorganized or liquidated. Before disbursement can be made it is necessary that the creditor, whether general or preferred, establish or prove his claim. An important function of the Comptroller

in this respect is to pass upon and allow or reject the claims sought to be established. (Sections 5234, 5235, 5236 U. S. R. S.; U. S. C., Ch. 2, Title 12, Sections 192, 193, 194.)

The instant case involves a set-off question which frequently arises incident to the reconcilement of an insolvent national bank's accounts with correspondent banks, and therefore directly affects the administrative functions of the Comptroller with reference to national banks now in receivership or in conservatorship, as well as those which, in the future, may go into receivership or conservatorship.

Obviously it is necessary, in order to avoid discrimination, that a uniform policy be pursued with reference to set-off to effect the pro rata distribution among creditors provided by law. Hundreds, and sometimes thousands, of set-off questions arise incident to the liquidation of each insolvent national bank. The last consideration of set-off questions with reference to such banks by this Honorable Court was on December 12, 1892, in the case of *Scott* v. *Armstrong*, 146 U. S. 499. The set-off question presented in the instant case was not involved.

For a period of years it has been the understanding of the Comptroller of the Currency that only such demands as were mutual at the time of an insolvent national bank's suspension, that is, beneficially owned by the same parties in the same right, can be made the basis of set-off. *Scott* v. *Armstrong, supra; Yardley* v. *Clothier,* 49 Fed. 337. Under this rule correspondent banks have been permitted to set-off against receivers' balances mutual demands beneficially owned

by the correspondent bank at suspension *but the right to set-off demands held by the correspondent bank in a representative capacity, and consequently beneficially owned by its customers, or others, has been denied.* The Comptroller of the Currency understands that this position was sustained by the United States Circuit Court of Appeals for the Fourth Circuit in *Federal Reserve Bank of Richmond* v. *Early,* 30 Fed. (2nd) 198 (in so far as the same concerned set-off against the cash surrender value of the reserve bank stock), by the United States Circuit Court of Appeals for the Eighth Circuit in *Hirning* v. *Federal Reserve Bank of Minneapolis,* 52 Fed. (2nd) 382, and in *Nomland, Receiver of the National State Bank of Stockton, Kansas,* v. *First National Bank of Kansas City, Missouri,* decided April 3, 1933, and in the authorities cited in the Receiver's supporting brief in the instant case.

The decision in the instant case appears to be in direct conflict with the principles of law constituting the basis of the uniform policy heretofore applied in all of the Circuits. The result is that until the issues in the instant case are finally settled by a decision of this Honorable Court, there will necessarily be a conconflict and inconsistency in the administration of the various receiverships, in that the previous practice will have to be followed in the districts other than the Fifth Circuit, and the principles established by the instant case will have to be observed, so far as applicable, in the Fifth Circuit. Thus the uniform system for winding up the affairs of insolvent national banks, contemplated by Congress, is made impractica-

ble in so far as the same concerns set-off of the kind here involved. *Cook County National Bank* v. *United States,* 107 U. S. 445; *First National Bank* v. *Selden,* 120 Fed. 212.

The speedy relief of depositors and creditors of insolvent banks, and banks in the hands of conservators, is a paramount public question. A decision upon the issues of law involved in the instant case, regardless of whether the decision below be affirmed or reversed, will be of inestimable aid to the Comptroller of the Currency in re-establishing a uniform policy to govern the treatment of such set-off claims, and will unquestionably substantially expedite the liquidation of national banks in receivership or in conservatorship by making possible the disposition of numerous other pending suits involving the same issues, and by eliminating future litigation of the same type.

III.

Conclusion.

The Comptroller of the Currency therefore earnestly urges this Honorable Court to entertain the petition for writ of certiorari filed by the Receiver in the instant case.

Respectfully submitted,

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JOHN F. ANDERSON,
Attorneys for F. G. Awalt,
Acting Comptroller of the Currency.